

§ 26.53

appeal and accompanying brief were received. The opposing party may request leave to file a brief in excess of 15 pages for good cause shown. The brief in opposition shall specifically state the opposing party's reasons for supporting the ALJ's determination or taking exceptions to any part of the ALJ's determination.

(d) *Extensions and additional briefs.* The Secretary or Secretary's designee may extend the deadlines or page limitations set forth in paragraphs (b), (c), and (d) of this section, in his or her sole discretion. The Secretary may also permit the filing of additional briefs, in his or her sole discretion.

(e) *Forwarding of the record.* Upon request by the Office of the Secretary, the ALJ shall forward the record of the proceeding to the Secretary or designee.

(f) *Personal appearance.* There is no right to appear personally before the Secretary or designee.

(g) *ALJ decisions upon failure to prosecute or defend.* There is no right to appeal any decision issued by an ALJ in accordance with § 26.37(d) of this part.

(h) *Objections not raised before ALJ.* In reviewing the initial decision, the Secretary or designee shall not consider any objection that was not raised before the ALJ, unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) *Evidence considered.* The Secretary or designee shall consider only evidence contained in the record forwarded by the ALJ. However, if any party demonstrates to the satisfaction of the Secretary or designee that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the Secretary or designee shall remand the matter to the ALJ for reconsideration in light of the additional evidence.

(j) *Ex parte communications.* The prohibitions of ex parte communications in § 26.33 shall apply to contacts with the Secretary or designee.

(k) *Relief.* The Secretary or designee may affirm, modify, reduce, reverse, compromise, remand, or settle any relief granted in the initial decision. The

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Secretary or designee shall consider, and include in any final determination, such factors as may be set forth in applicable statutes or regulations.

(1) *Decision—(1) Generally.* Where a Secretarial appeal has been timely made, the Secretary, or designee, shall issue a written determination within 30 days after receipt of the brief in opposition, if any, and shall serve it upon the parties to the hearing. The Secretary, or designee, may extend the time in which a written determination must be issued by an additional 60 days for good cause shown in a written justification issued to the parties. The written decision of the Secretary shall be the final agency action. If the Secretary, or designee, does not act upon the appeal of an initial decision within 90 days of service of the appeal, then the initial determination shall be the final agency action.

(2) *Exception for cases brought under the Program Fraud Civil Remedies Act.* Where a Secretarial appeal has been timely made in a case brought under the Program Fraud Civil Remedies Act, the Secretary, or designee, shall issue a written determination within 30 days after receipt of appeal and shall serve it upon the parties to the hearing. The written decision of the Secretary shall be the final agency action. If the Secretary, or designee, does not act upon the appeal of an initial decision within 30 days of service of the appeal, the initial decision shall become final and the Respondent will be served with a statement describing the right to seek judicial review, if any.

§ 26.53 Exhaustion of administrative remedies.

In order to fulfill the requirement of exhausting administrative remedies, a party must seek Secretarial review under § 26.52 prior to seeking judicial review of any initial decision issued under subpart B of this part.

§ 26.54 Judicial review.

Judicial review shall be available in accordance with applicable statutory procedures and the procedures of the appropriate federal court.